

State of Colorado



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Governor

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Board Chair

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State Personnel Board
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AGENDA PUBLIC BOARD MEETING March 21, 2006

A public meeting of the State Personnel Board will be held on **Tuesday, March 21, 2006, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by March 16, 2006.

I. REQUESTS FOR RESIDENCY WAIVERS

- A. March 1, 2006 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

- A. Petition for Declaratory Order of the Colorado Federation of Public Employees (CFPE) v. Department of Personnel and Administration, State Personnel Board case number 2006D003.

On February 8, 2006, CFPE filed a petition for declaratory order asking that the State Personnel Board act immediately to provide an interpretation of the law and guidance in the following areas, which CFPE asserts are within the Board's full jurisdiction and which were previously covered by the Director's Procedures: Director's Procedure 4-24 - Referrals for Multiple Vacancies, Director's Procedures 4-31 - Temporaries, and Procedures 10-3(F) and 10-5 - Personal Services Contracts.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Jeckonias N. Muragara v. Department of Revenue, Division of Motor Vehicles, Driver Control Section, State Personnel Board case number 2006B001.

Complainant, a probationary employee, was terminated for unsatisfactory performance and filed a petition for hearing on July 6, 2005. On November 7, 2005, the ALJ dismissed his case, finding that: (1) Although he raised a general allegation of discrimination based on race and national origin, in his information sheet, Complainant offered no exhibits to support his claim and no description of testimony from witnesses, which would

substantiate his allegation of discrimination; (2) Respondent worked with Complainant to find another position for which he was qualified in an effort to avoid separating him from state employment; and (3) Complainant failed to demonstrate a *prima facie* case of discrimination and thus, the Board lacks jurisdiction to hear his case.

Following a timely filing of a notice of appeal, on December 16, 2005, Complainant filed Plaintiff Has the Burden to Prove Jurisdiction. On January 31, 2006, he filed Appellant's [sic] Opening Brief. Respondent filed its Answer Brief on February 2, 2006, and Complainant filed Complainant's Reply on February 10, 2006.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Scott Horak v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2005G090.

Complainant, a certified Wildlife Technician II, with the Department of Natural Resources, Division of Wildlife, filed a petition for hearing on April 29, 2005, arguing that Respondent denied him relief in the final agency grievance decision. Complainant asserts that the final grievance decision was arbitrary and capricious because the appointing authority essentially stated he was unable to substantiate any of Complainant's allegations concerning Complainant's participation in a pre-examination review, the disqualification and lateral transfer requests. In an earlier grievance (dated December 2, 2004 based on age discrimination), which was dismissed without prejudice by the Board, Complainant made allegations of a hostile work environment, in addition to age discrimination. Complainant requested a "no fault divorce" from DNR based on irreconcilable differences.

Respondent argues that Complainant has never provided any written evidence to support his allegations, he failed to meet his burden of showing that valid issues exist that merit a full hearing, and he is not entitled to any relief in this matter.

On February 10, 2006, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be denied.

- B. Arthur Robinson v. Regents of the University of Colorado, University of Colorado at Denver & Health Science Center, College of Architecture and Planning, State Personnel Board case number 2005G008.

Complainant, an Information Technology Technician II in Computing Information & Network Systems at the College Architecture and Planning, University of Colorado at Denver & Health Science Center, filed a petition for hearing on July 16, 2004, arguing that his failure to be promoted and his transfer were discriminatory.

Respondent argues that the Complainant has failed to meet his burden of showing that a valid issue exists for hearing and to establish a *prima facie* case of discrimination, any actions taken by Respondent were not arbitrary and capricious, and the relief requested is not within the Board's authority to grant.

On February 16, 2006, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be denied.

- C. Donna M. Joseph v. Department of Human Services, Division of Disability Determination Services, State Personnel Board case number 2005G093.

Complainant, a certified Technician II, employed by the Department of Human Services, Division of Disability Determination Services, filed a petition for hearing on April 21, 2005, arguing that Respondent's final grievance decision upholding a corrective action was arbitrary and capricious. Complainant argues that she has been treated differently from other employees concerning demotions, the time period for her corrective action is longer than the time period for corrective actions imposed on others, and Respondent failed to address many of the allegations in her grievance, including abuse of authority and stalking.

Respondent argues that Complainant makes claims outside the scope of her grievance, including the issues of racial and gender discrimination, paid administrative leave, hostile work environment, defamation of character and slanderous statements. In addition, Respondent argues that the corrective action was not arbitrary and capricious and that Complainant's allegations were adequately addressed by the Acting Manager of the Office of Self-Sufficiency.

On February 16, 2006, the Administrative Law Judge issued a Preliminary Recommendation, recommending that Complainant's petition for hearing be denied.

D. Susan Nickolette v. Department of Corrections, State Personnel Board case number 2005G097.

Complainant, a certified Nurse III, employed by the Department of Corrections, filed a petition for hearing on May 2, 2005, arguing that she was denied relief in the Step II grievance decision and that the final grievance decision was arbitrary and capricious because DOC failed to provide any accommodations, much less reasonable accommodations in violation of DOC's policy § 1450-42, Respondent failed to give reasonable accommodation to Complainant and violated the Americans with Disabilities Act (ADA) and that transferring Complainant from San Carlos Correctional Facility in Pueblo to Fremont Correctional Facility, violated Board Rules and Director's Procedure P-5-35 and the Family Medical Leave Act.

Respondent argues that Complainant failed to meet her burden of showing that valid issues exist that merit a full hearing and ask the Board to deny Complainant's petition for hearing.

On March 2, 2006, the Administrative Law Judge issued a Preliminary Recommendation, recommending that Complainant's petition for hearing be denied.

E. Beverly Linden-Lowell v. Department of Transportation, State Personnel Board case number 2005G115.

Complainant, a certified Transportation Maintenance Worker I employed by DOT, Region I, filed a petition for hearing on June 15, 2005, arguing that Respondent's final grievance decision was arbitrary and capricious. Complainant asserts that the audit report done by DOT's payroll office does not reflect the leave reported on time sheets submitted and there is no proof that the 24 hours charged for her back injury claim have been restored to her leave bank.

Respondent argues that Complainant is not alleging any unlawful behavior on the part of Respondent; Complainant presents no arguments that would suggest Respondent's audit process was unlawful, violated a rule or was done in bad faith; and Complainant has failed to state a valid claim which would merit a hearing.

On March 7, 2006, the Administrative Law Judge issued a Preliminary Recommendation,

recommending that Complainant's petition for hearing be denied.

F. Eric Brunner v. Department of Corrections, State Personnel Board case number 2006G044.

Complainant is a Correctional Officer who has applied to become a Community Parole Officer. Complainant was initially denied the chance to go through a necessary background investigation after having several discussions with the manager of unit which conducts the investigations, Investigator and Unit Manager Danny Lake. Complainant grieved the decision not to allow him to go through the process, and that grievance brought about a reversal in Mr. Lake's decision not to allow Complainant to undergo the background investigation.

Complainant was then allowed to participate in the four-step background process. At the conclusion, he was informed that he had not passed the background investigation and would not be considered for the parole officer position. The stated grounds for his denial were:

- That the employment history demonstrated inappropriate contact with fellow workers;
- Non-disclosure of significant and sustained work related reprimands, omitted during the integrity interview;
- Other contradictory statements during the integrity interview, suitability assessment and polygraph examination, in reference to employment history, criminal history and drug use.

Complainant requested explanations of what discrepancies or other negative information had been located, and those requests were not answered. He filed a grievance with the department which explained why he thought no discrepancies should have been noted and that there was no non-disclosure of work-related reprimands or inappropriate contacts. Complainant's grievance also explained that he feared that this result was retaliation from the fact that he had grieved Mr. Lake's initial decision to deny him participation in the exam and been successful in overturning that decision.

Respondent answered the grievance by making a finding that OIG Investigator Lake was not involved in the decision on Complainant's suitability.

There is no indication that anyone examined Complainant's contention that no discrepancies actually existed in his background examination, and there is no indication in the file that there had been a review of his answers by anyone as part of the grievance process. Moreover, Respondent's factual conclusion that Mr. Lake was not involved is directly contradicted by the fact that Mr. Lake signed the letter rejecting Complainant, and that Mr. Lake states in this letter that he and a technician had completed and evaluated Complainant's background investigation.

Given the failure of the grievance process in this matter to address the basic factual contentions of the grievance, and given the unexplained discrepancy between Mr. Lake's letter explaining that he had rejected Complainant and Respondent's assertion that Mr. Lake had nothing to do with the background evaluation for Complainant, there appears to be genuine issues of fact which merit a hearing in this matter. Accordingly, the undersigned ALJ recommends that a hearing be GRANTED on the issue of whether Respondent had sufficient factual grounds to reject Complainant for the position of Community Parole Officer.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

There are no Initial Decisions or other final Orders of the Administrative Law Judges or the Director before the Board this month.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 21 AND MARCH 1, 2006 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS FEBRUARY 21 AND MARCH 1, 2006 PUBLIC MEETINGS:

- A. Barry Rice v. Department of Higher Education, University of Colorado at Denver, Auraria Media Center, and Auraria Higher Education Center, State Personnel Board case number 2006D002.

Noting that a petition for writ of certiorari is pending in the Colorado Supreme Court, the Board voted to deny the petition for declaratory order based on jurisdictional grounds.

- B. Randy Pfaff v. Department of Corrections, State Personnel Board case number 2004B112(C).

The Board voted that: (1) Complainant's Withdrawal of Motion to Vacate Judgment Pursuant to C.R.C.P. 60(b) is granted; and (2) Attorney fees and costs are assessed against Complainant's counsel and awarded to Respondent for costs incurred in the preparation of Respondent's response to Complainant's Motion to Vacate, pursuant to C.R.C.P. 11 and 121, Section 1-15(8). The award of fees and costs is specifically assessed against counsel for Complainant and is not intended to be charged to or paid by Complainant in this case. The matter shall be remanded to the Administrative Law Judge for a hearing to determine the amount of attorney fees and costs.

- C. David Ruchman v. Department of Revenue, Enforcement Group, Hearings Division, State Personnel Board case number 2005B085.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an Order of the Board.

- D. Shelly Burke v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2004B069.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an Order of the Board.

- E. Helen Bruckbauer v. Department of Transportation, State Personnel Board case number 2004G056 (C).

The Board voted to deny Complainant's Pleading to the Director/Personnel Board for Reconsideration of the ALJ's Preliminary Recommendation of "Hearing Denied" Received February 13, 2006, pursuant to Board Rule 8-51B; to adopt the Preliminary Recommendation of the Administrative Law Judge; and to deny the petition for hearing.

- F. Ida Archuleta v. Department of Human Services, Colorado State Veterans Center, State Personnel Board case number 2005B048.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- G. Julie Torvik v. Department of Public Health and Environment, Laboratory Services Division, State Personnel Board case number 2005G040.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- H. Toni R. Lucci-Wolgamott v. Department of Natural Resources, Board of Land Commissioners, State Personnel Board case number 2005G044.

The Board voted to deny Respondent's Request for Materials to be included in State Personnel Board Packet, pursuant to Board Rule 8-51B; to adopt the Preliminary Recommendation of the Administrative Law Judge; and to grant the petition for hearing.

- I. Annette Collier v. Department of Human Services, Colorado State Veterans Home, State Personnel Board case number 2004B156.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- J. Chantal Smith v. Department of Human Services, Division of Child Welfare, State Personnel Board case number 2005G107.

The Board voted to deny Complainant's Motion to Reconsider Preliminary Recommendation of the ALJ, pursuant to Board Rule 8-51B; to adopt the Preliminary Recommendation of the Administrative Law Judge; and to deny the petition for hearing.

- K. Anthony Tweneboah-Koduah v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2005G068.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- L. Ron Harthan v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2006G034.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- M. Erin M. Hutchinson v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2006G036.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- N. Nanci Bravo v. Department of Human Services, Colorado State Mental Health Institute at Pueblo, State Personnel Board case number 2006G039.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

- O. Kevin W. Cook v. Regents of the University of Colorado, University of Colorado at Boulder, Housing Facilities Services, State Personnel Board case number 2006G012.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to grant the petition for hearing on the issue of retaliation.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. PROPOSED LEGISLATION AND/OR RULEMAKING

RULEMAKING

The Board's Notice of Rulemaking was issued on January 20, 2006, and published in the Colorado Register on February 10, 2006. The proposed rules and the proposed statement of basis and purpose have been available for review at the Board office as well as on the Internet since February 21, 2006. Testimony and comments regarding proposed amendments to the Board Rules will be taken at this meeting. The public testimony and comment portion of the rulemaking hearing is open. The purpose of the Rulemaking proposed for March 21, 2006, is to adopt amendments to the Board Rules in order to change the citation to the Board Rules to eliminate confusion with Director's Procedures, to clarify the number of copies of briefs and motions to be filed with the Board, to eliminate confusion regarding designations of exhibits for Board hearings, and to comply with the State Employee Protection (Whistleblower) Act, as defined in statute. These rules are proposed for the general clarification for the public and efficient management of the Board.

XI. EXECUTIVE SESSION

A. Case Status Report

B. Minutes of the February 17, 2006 Executive Session

C. Other Business

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

April 18, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 16, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 20, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
July 18, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
August 15, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
September 19, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
October 17, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 21, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 19, 2006	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604